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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,036	06/26/2001	Juha Matero	324-010442-US(PAR)	1829

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PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06824

EXAMINER

HARVEY, MINSUN OH

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/892,036

Applicant(s)
MATERO et al

Examiner
MINSUN HARVEY

Art Unit
2644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 to 8, 10 to 14, 16 to 27, 29 to 30 and 33 to 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Gershkovich.

Gershkovich discloses a portable device which is comprised of control means for controlling the operation of the device (70 and 76); tone means that are controlled by the control means and that produce sound electro-acoustically (82); which control means are arranged to give feedback on the operation of the device by using a tone produced by the tone means (col. 8, lines 9 to 14); and determining means (72) for determining the volume of the background noise of the usage environment of the device, on the basis of which background noise volume the control means are arranged to automatically adjust at least one tone feature that can be sensed by hearing, such that the tone is distinguished from background noise by a human hearing sense (col. 8, lines 14 to 38); the determining means are arranged to determine the volume of background noise at different frequencies, and the control means are arranged to produce a tone particularly at such frequencies where the volume of background noise is low (since volume of background noise is determined at different time, it is inherent that it is at different frequencies; see col. 9, line 60 to col. 10, line 13); control means are arranged to produce a tone that is louder

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that background noise (variable gain amplifier is controlled by microprocessor 72 to vary gain where a tone is louder than a background noise); and wherein the determining means comprise conversion means for performing an acoustic electric conversion for background noise and the control means (84).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 14, 15, 28 and 31 to 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gershkovich in view of Here.

Gershkovich does not disclose that the control means arranged to form a tone from notes and to make the individual notes sound longer and to make the individual notes sound longer and different tone frequency ranges are automatically selectable.

Here discloses a portable device which is comprised of selecting different tone frequency ranges (memory 100 stores different tone and a user could recall different tone) and forming a tone from notes and to make the individual notes sound longer (col. 6, line 46 to col. 7, line 8). Since Here has disclosed automatically selecting tone frequency ranges and making individual notes, it would have been obvious to combine Here's teaching with Gershkovich because a user could create different tone signals for indicating different modes in a system.

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5. EP 0781071 which was cited on IDS has not been considered since no English translation was provided.

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to **Minsun Oh Harvey** whose telephone number is **(703) 308-6741**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Bill Isen**, can be reached at **(703) 305-4386**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

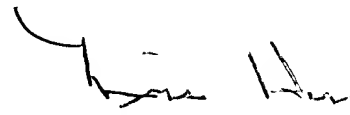
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA, Sixth Floor (Receptionist)

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Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



MINSUN OH HARVEY
PRIMARY EXAMINER